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October 5, 1998

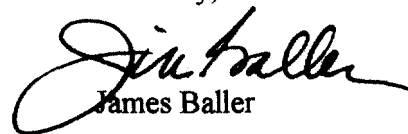
Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

**Re: Notice of *Ex Parte* Communication,
Missouri Petition for Preemption, CC Docket No. 98-122**

Dear Secretary Salas:

Enclosed please find two (2) copies of an *ex parte* written communication from the Missouri Municipals to the Commissioners, for inclusion in the public record. The letter concerns the preemption proceeding involving a section of the Revised Statutes of Missouri, currently before the Commission in CC Docket No. 98-122.

Sincerely,


James Baller

Enclosures

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October 5, 1998

The Honorable William Kennard
The Honorable Susan Ness
The Honorable Harold Furchgott-Roth
The Honorable Michael Powell
The Honorable Gloria Tristani

re: *Missouri Petition for Preemption*, CC Docket No. 98-122

Honorable Members of the Commission:

The municipalities and municipal electric utilities of Missouri (the "Missouri Municipals") have petitioned the Commission to preempt Section 392.410(7) of the Revised Statutes of Missouri ("HB 620"). That measure, with certain limited exceptions, prohibits the Missouri Municipals from providing or facilitating the provision of telecommunications services in their communities. The pleading cycle on the Petition ended on August 13, 1998.

With this letter, the Missouri Municipals invite the Commission's attention to the comments that the National Telephone Cooperative Association ("NTCA"), GTE Service Corporation ("GTE") and SBC Communications, Inc. ("SBC") filed on September 14, 1998, in response to the Commission's Notice of Inquiry on the deployment of advanced telecommunications capabilities to all Americans, CC Docket No. 98-146. These comments materially undermine several of the arguments that NTCA, GTE and SBC's subsidiary, Southwestern Bell Telephone Company, have made in opposition to the Missouri Petition.

The Missouri Municipals also offer the Commission additional factual support for some of the points that they have previously made in the Missouri proceeding. This information merely completes the record and does not raise any new substantive issues.

**NTCA's, GTE's and SBC's Comments in CC Docket 98-146
Undermine Their Arguments In Opposition to the Missouri Petition**

In the Missouri proceeding, GTE and Southwestern Bell claim that preemption of HB 620 is unnecessary because competition is "beginning to flourish" in Missouri. NTCA, GTE and Southwestern Bell also contend that discrimination against municipal entities is appropriate on various

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legal, economic and policy grounds. The comments that NTCA, GTE and SBC recently filed in CC Docket 98-146 contradict these claims and underscore the need for preemption of HB 620.

In its comments, NTCA, the national trade association for approximately 500 cooperatively-owned local exchange carriers, confirms the Missouri Municipals' point that timely and affordable access to advanced telecommunications services is vital to rural communities:

[I]n order to remain economically viable, rural communities must have access to the same telecommunications services as urban communities. A rural community may have just one major employer. If that one employer relocates from the community because of inferior telecommunications services, the results could be devastating. Conversely, a technologically advanced rural community could entice business. In order to remain competitive, business and industry located in rural areas must have access to the same telecommunications capabilities as the rest of the country. The economic success of many rural communities will depend on it.

The success of the children of a rural community is similarly dependent on having the same technological opportunities as urban children. All children, no matter where situated should have access to the same tools. Despite the fact that it is more expensive to bring broadband technology into rural homes and schools, rural children will compete with their urban counterparts for higher education and jobs. As such, rural children require equal access to broadband technology at prices competitive with urban areas.

NTCA Comments at 4 (Attachment A hereto).

NTCA also confirms that the private sector, including NTCA's members, cannot be expected to deploy advanced telecommunications services in most rural areas anytime soon. Referring to a recent survey of its members, NTCA indicates that most are not providing advanced telecommunications services today and that many currently have no plans for doing so. *Id.* at 3. Furthermore, of those that do have plans to deploy advanced capabilities such as advanced digital subscriber line ("ADSL"), "[m]any responding companies may provide such service to just a few select subscribers, i.e., schools and businesses." *Id.* at 3.n.5. The primary reason for this, according to NTCA, is that 87 percent of its respondents believe that "cost to customer," driven up by "[v]ast distances and difficult terrain," is a serious obstacle to broadband deployment. *Id.* at 4-5 and 4 n.6. Thus, NTCA concludes,

As technology changes, the urban areas of the country will naturally enjoy the advances first. The profit margin and competition in urban markets provide incentive for technological advances. In rural communities there will always be areas where cost of providing service outweighs the profit potential. Despite this fact, the FCC is charged

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with advancing universal service in rural areas. The only way to make advanced services viable in many areas of the country is through universal service support.

NTCA Comments at 5-6.

GTE's and SBC's comments similarly substantiate the Missouri Municipals' contention that the private sector is not currently serving the needs of rural communities and will not have the economic incentive to do so until demand in urban markets is satisfied. GTE states:

As with any new consumer product, demand for advanced services is developing unevenly. This most assuredly is not an indication of market failure. Rather, it reflects the simple fact that, during the initial stages of deployment, a critical mass of demand has not been achieved and efficiencies and economies of scale and scope have not been maximized.

For example, in many cases, businesses are the first adopters of new broadband technology, since they have the greatest need for high-speed transmission capabilities. As a result, *carriers tend to make advanced telecommunications capability available first in areas with relatively high concentrations of business customers. . . .*

Similarly, many non-ILEC service providers are deploying telecommunications capability solely or predominantly in urban areas. This, too, should be expected. It can be expensive to invest in the infrastructure needed to provide such services. Accordingly, *it is rational to build the infrastructure first in areas where demand is likely to be greatest and unit costs are likely to decline most quickly. Once economies of scale and scope are captured, infrastructure can be extended to less densely populated locations.*

GTE's Comments at 9-10 (emphasis added) (footnotes omitted) (Attachment B).

SBC makes much the same point, using the obstacles that it faces in deploying ADSL capabilities as an example:

SBC offers a number of advanced services that are based upon advanced telecommunications capability (e.g., frame relay, cell relay). These services have, however, generally been aimed at the large and medium size business communities. For small businesses and residences, SBC has widely deployed ISDN. Recently, Pacific Bell has begun deploying [ADSL] capabilities in 87 central offices in California.

Adding advanced telecommunications capabilities to a network already populated with a number of pre-existing technologies and services is not easy,

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however, and the Commission should not assume otherwise. ADSL is a prime example. . . . SBC has had to develop and implement new operating standards in introducing ADSL to its networks in order to address spectrum and power conflicts between ADSL and existing ISDN and HDSL services. That process is neither easy or quick, and can result in extreme and costly measures being taken to assure that deployment of new technologies does not disrupt the embedded base of SBC's and its competitors' technologies and services, or otherwise harm or impair the network. At times it is simply not possible to accommodate all desired uses of the network in a particular location. . . .

Even where an advanced telecommunications capability is available that could technically and operationally be deployed, the expected demand and associated costs may make the deployment uneconomical. This is particularly true in rural markets where the costs of deploying the capability may be greater (e.g., might also require deployment of ATM switch and fiber transport which already exist in metropolitan areas due to other demand), the demand lower, and the cost per-unit proportionately higher.

SBC's Comments at 5-7 (emphasis added) (Attachment C).

In short, NTCA, GTE and SBC candidly acknowledge in their comments in CC Docket No. 98-146, that there is a pressing need for advanced telecommunications services in rural areas, that such services are not generally available in rural areas today, and that the private sector cannot be expected to provide these services in the foreseeable future.¹ These concessions are particularly important because they reflect the thought processes that will direct the actions of some of the most significant potential providers of advanced telecommunications in Missouri.

It is also instructive to examine the remedies that NTCA, GTE and SBC propose to the challenge of deploying advanced telecommunications rapidly to rural communities. According to NTCA, "[t]he only way to make advanced services viable in many areas of the country is through universal service support." NTCA's Comments at 6. The Missouri Municipals disagree. To be sure, universal service subsidies may be necessary in some areas. But the Commission can also facilitate the

¹ As the Missouri Municipals have also shown, GTE's and Southwestern Bell's claim that competition is "beginning to flourish" in Missouri is belied by their filings with the Commission. Missouri Municipals' Reply Comments at 20-21. Even if competitive local exchange carriers (CLECs) were operating 50,000 access lines in Missouri by mid-1998 (rather than the 30,000 access lines, as GTE estimated in its opposition), this would represent about 1.7 percent of the total number of access lines in Missouri. Furthermore, the number of access lines operated by GTE and SBC themselves grew by 65,000 in the first half of 1998, more than double the number of access lines that GTE claims all CLECs operated during that period. *Id.*

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deployment of advanced services in many markets simply by reading the term "any entity" in Section 253(a) to cover municipal entities, as Congress intended.

Furthermore, the interests of cooperatively-owned and municipally-owned entities do not necessarily conflict, as NTCA implies. For example, through a strategic partnership known as Pioneer Holdings, Northwest Iowa Power Cooperative is working hand-in-hand with MCI (a national telecommunications provider), Long Lines, Ltd. (an independent telephone company) and several municipal electric utilities to bring competitive telecommunications services to rural communities in Iowa and South Dakota. See <http://www.pioneerholdings.com>, <http://www.nipco.com> and <http://www.longlines.com>. Another example is the Allied Utility Network, a consortium that provides "one-stop" energy and telecommunications services in many states. Allied's four constituent members are Cobb Energy Management Corporation (a cooperatively-owned utility), Colorado Springs Utilities (a municipally-owned utility), Idaho Power (a privately-owned utility) and Omaha Public Power District (a public power district). See http://www.csu.org/value/alli_faq.html.

GTE's main suggested remedies are that the Commission remove regulatory barriers and treat all potential providers the same:

GTE urges the Commission to be guided by one fundamental principle in discharging its obligations under § 706: to promote the "reasonable" and "timely" deployment of advanced telecommunications capability, the Commission should engage in the least possible regulation and *should treat all providers of advanced telecommunications symmetrically*.

GTE Comments at 2 (emphasis added). Later, GTE states that "the Commission must be careful not to favor or deter any technology or class of provider," *id.* at 4, and that "[t]o promote deployment of advanced telecommunications capability by all potential competitors, the Commission must treat all providers of advanced services equally." *Id.* at 17. Elsewhere, GTE explains that,

regulation that favors or disfavors a particular competitor *simply because of its status* (e.g., ILEC, CLEC, ISP, MVPD) creates destructive marketplace distortions that deter investment and shift the risks of technology and service deployment to the disfavored class of competitors. These distortions, in turn, give rise to constituencies seeking to perpetuate disparate regulation in order to preserve an artificial competitive advantage.

GTE Comments at 18 (emphasis).

Furthermore, in its comments in opposition to the Missouri Petition, GTE stated that it "firmly believes that government agencies are intended to serve the needs of citizens where private industry will not or cannot meet those needs." Opposition of GTE at 8-9. Having now acknowledged that the private sector is not meeting, and cannot be expected to meet, the telecommunications needs of rural

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communities, GTE logically should no longer have any objections to the participation of municipal entities in providing or facilitating the provision of such services.

For its part, SBC also emphatically argues that the Commission should remove regulatory barriers to entry and treat all potential providers the same:

At end, regulatory treatment of advanced telecommunications capability and advanced service should be competitively neutral, and not depend on upon the identity of the provider, or its historical regulatory category.

SBC Comments at 9.

To be sure, in making the statements quoted above, GTE and SBC are referring to themselves, and not to municipal entities, as victims of discrimination by the Commission. Their principle, however, should apply equally to municipal entities.

Supplemental Factual Information

To complete the record, the Missouri Municipals offer the Commission certain additional factual information that furnishes additional support for points they previously made in their Petition and Reply Comments. This information does not raise any new substantive issues.

In their Petition, the Missouri Municipals discussed the legislative history of Section 253(a) at length and argued that this history "makes clear that Congress understood that municipalities and municipal electric utilities could help provide or facilitate competition to telecommunications markets, especially in rural areas; that Congress intended to encourage municipalities and municipal electric utilities to play these roles in their communities; and that Congress manifested this intent through the definitions and preemption provisions of the Act." Missouri Petition at 32. The Missouri Municipals also stated that, if freed from the barriers posed by HB 620, they would be "ready, willing and able to serve their communities, as they have done with success in the electric power area for decades." *Id.* at 34. Appended as Attachment D are materials confirming that some of the Missouri Municipals have long had unused capacity available to provide or support the provision of telecommunications services in their communities and that other Missouri Municipals will soon have such capacity.

The Missouri Municipals also contended that restricting municipal electric utilities from engaging in the full range of telecommunications activities could disrupt the competitive balance among public and private providers of electric power that has served Missouri well for decades and that Congress and the states are working hard to preserve. Missouri Petition at 2, 23. Specifically, the Missouri Municipals argued that "[w]ith investor-owned and cooperatively-owned electric utilities free to enter into new lines of business, form alliances with telecommunications providers of their choice, and offer consumers "one-stop shopping" for energy, communications and other services, HB 620 would put municipal electric utilities at a severe competitive disadvantage." *Id.* at 23. Appended as

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Attachment E is an excerpt from the Edison Electric Institute's 1997 Financial Review showing that investor-owned electric utilities are rapidly diversifying into the field of telecommunications.

Conclusion

For the reasons set forth in the Missouri Municipals' Petition and Reply Comments, as well in NTCA's, GTE's and SBC's comments in CC Docket 98-146, the Missouri Municipals urge the Commission to grant their petition as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Baller", with a long horizontal flourish extending to the right.

James Baller

Attachments

cc: John Nakahata, Chief of Staff
Christopher Wright, General Counsel
Kathryn Brown, Chief, Common Carrier Bureau
Thomas Powers, Legal Advisor to Chairman Kennard
Anita Walgren, Legal Advisor to Commissioner Ness
Paul Misener, Legal Advisor to Commissioner Furchgott-Roth
Kyle Dixon, Legal Advisor to Commissioner Powell
Paul Gallant, Legal Advisor to Commissioner Tristani
The National Telephone Cooperative Association
GTE Service Corporation
SBC Communications, Inc.
The Attorney General of the State of Missouri

CERTIFICATE OF SERVICE

I, James Baller, hereby certify that on this 5th day of October 1998, I caused copies of the foregoing letter to be served on the parties on the attached Service List, by hand delivery, where indicated, and by first-class, U.S. Mail, where indicated.

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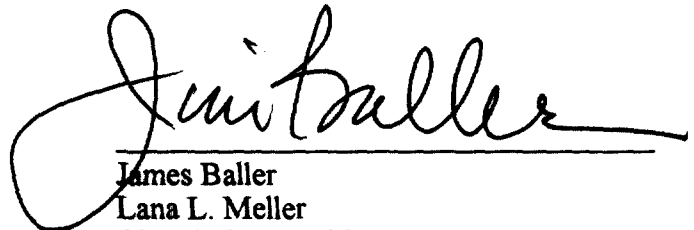
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Attorneys for the
Missouri Municipals

August 28, 1998

ATTACHMENT A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

In the Matter of

Inquiry Concerning the Deployment of)	
Advanced Telecommunications)	CC Docket No. 98-146
Capability to All Americans in a)	
Reasonable and Timely Fashion, and)	
Possible Steps to Accelerate Such Deployment)	
Pursuant to Section 706 of the)	
Telecommunications Act of 1996)	

COMMENTS OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

National Telephone Cooperative Association ("NTCA") is a national association of approximately 500 local exchange carriers that provide service primarily in rural areas. All NTCA members are small carriers that are "rural telephone companies" as defined in the Telecommunications Act of 1996. Approximately half of NTCA's members are organized as cooperatives.

I. INTRODUCTION

The rural local exchange carriers (LECs) are very much involved in the proceedings concerning advanced services. The rural carriers are keeping up with technological changes and have every intention of remaining competitive as the 21st Century approaches. As is described in detail below, several rural carriers have deployed broadband technology and the majority intend to do so. Despite the rural carriers' active deployment of advanced services, the FCC must acknowledge that there are differences between rural and urban carriers. There will always be areas

of the country where associated costs will inhibit the provision of quality service. In recognition of this fact, the FCC should adopt rules that promote true universal service and implement policies that endorse an evolving definition of universal service which includes advanced telecommunications services.

II. THERE IS A DEMAND FOR BROADBAND TECHNOLOGY IN RURAL AREAS

In response to this Notice of Inquiry, NTCA conducted a survey of its members requesting information about each company's deployment of advanced services. About half of NTCA's members responded. It is clear that most rural LECs see a demand for broadband services. When asked to estimate the current demand for advanced telecommunications services in their areas broken down according to various market segments, responding companies indicated that schools are demanding broadband service the most.¹ The medical field was on the next tier of demand, followed by businesses and then local government. Residential use created the least demand for advanced services.²

NTCA also asked its members about what types of advanced telecommunications capability their areas need most. The majority of respondents indicated that the largest need is for Internet services, followed by distance learning and tele-medicine. E-commerce and multichannel video programming were also significant.

While less than 1 in 4 responding companies have deployed Digital Subscriber Line (xDSL)

¹ 35% of responding companies indicated that schools currently create 80% of their demand for advanced telecommunications services.

² 75% of responding companies indicated that current residential demand for advanced service is 10% or less.

technology, 48%³ of respondents are planning some deployment.⁴ Companies were then asked ~~which broadband "last-mile" technologies they have or expect to deploy within the next five years.~~

In addition to xDSL, companies are deploying fiber, hybrid fiber coax, and wireless technology to meet their needs.⁵ The companies planning to deploy broadband technology recognized that "significant increases" in their backbone capacity were required to handle advanced telecommunications services.

The rural nature of NTCA member companies led to concerns over loop lengths. Many respondents have long local loops which exceed the 18kf limitation of xDSL technology on copper cable. One respondent indicated that the cost of redesigning its plant to meet the 18kf criteria would make a service offering unaffordable to both business and residential customers.

In addition to finding out the current state of deployment in this country, the FCC asked for information about whether rural communities are more dependent on telecommunications services than other communities. ~~While it is difficult to quantify "more dependent" given the time constraints of this Notice of Inquiry,~~ in order to remain economically viable, rural communities must have access to the same telecommunications services as urban communities. A rural community may

³ The percentage of subscribers who will have advanced telecommunications service available to them is much lower. NTCA only asked members to indicate whether do or have plans to deploy ANY xDSL technology. Many responding companies may provide such service to just a few select subscribers, i.e. schools and businesses.

⁴ 28% of responding companies have no plans to deploy xDSL technology or remain undecided.

⁵ Of the companies planning to deploy broadband "last mile" technologies, 72% are deploying xDSL, 29% fiber, 16% hybrid fiber coax, and 12% wireless. Percentages when added together equal more than 100% because some responding companies indicated that they were deploying more than one technology.

have just one major employer. If that one employer relocates from the community because of inferior telecommunications services, the results would be devastating. Conversely, a technologically advanced rural community could entice business. While it is not clear that rural residents rely any more than urban residents on advanced services, rural communities are certainly often more dependent on individual businesses. In order to remain competitive, business and industry located in rural areas must have access to the same telecommunications capabilities as the rest of the country. The economic success of many rural communities will depend on it.

The success of the children of a rural community is similarly dependent on having the same technological opportunities as the urban children. All children, no matter where situated should have access to the same educational tools. Despite the fact that it is more expensive to bring broadband technology into rural homes and schools, rural children will compete with their urban counterparts for higher education and jobs. As such, rural children require equal access to broadband technology at prices competitive with the urban areas.

III. THE FCC MUST RECOGNIZE THE REALITIES OF RURAL AMERICA IN ITS PROMOTION OF ADVANCED SERVICES

The FCC asked about how it can promote advanced services and possible reasons for slow deployment. The most important thing the FCC can do to promote broadband deployment in rural areas is to put in place policies that make the provision of advanced services economically viable. Rural carriers responding to the survey most often cited "cost to the customer" as an obstacle to deployment.⁶ Vast distances and difficult terrain make the provision of service in rural areas

⁶ 87% of respondents stated that cost to customer was an obstacle to broadband deployment.

challenging, especially where hard wires or point to point wireless service is used. This service challenge translates to higher costs for the telcos, which necessarily translates to higher prices for the consumer. When the cost to the consumer outweighs the perceived benefit, the consumer will forgo purchasing the service. When a telecommunications carrier sees little demand for a product or service, it will forgo the significant investment necessary to make it available. Thus, without policies that promote service in rural areas, many rural areas may do without.

The Telecommunications Act of 1996 dictates that "Universal service is an evolving level of telecommunications services that the Commission shall establish periodically . . . taking into account advances in telecommunications and information technologies and services."⁷ While the FCC specifically requests comment on whether the goals of section 706 should be considered in interpreting the word "evolving," it could hardly be more obvious that such an interpretation was Congress' intent.⁸ As the Act directs the FCC, it must review its universal service definition regularly and establish policies based on a forward looking analysis of technology. As technology changes, the urban areas of the country will naturally enjoy the advances first. The profit margin and competition in urban markets provide incentive for technological advances. In rural communities there will always be areas where cost of providing service outweighs the profit potential. Despite

⁷ 47 U.S.C. § 254(c)(1).

⁸ See, e.g. 47 U.S.C. § 254 (b)(3), "Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including . . . advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."

this fact, the FCC is charged with advancing universal service in rural areas. The only way to make advanced services viable in many areas of the country is through universal service support.

The FCC also requested comment on its rules which may discourage investment opportunities or deployment. 32% of NTCA's member who responded to the survey said that regulatory requirements were an obstacle to broadband deployment. The FCC must continually consider the rural telcos when adopting rules or implementing policy. Often, what is not burdensome to a large LEC, is overwhelming to a rural LEC. For example, in the sister NPRM, the FCC is considering a rule that releases incumbent LEC's who provide advanced services from the unbundling requirements if the services are provided through a separate affiliate. While this requirement may be reasonable and desirable for a large LEC, it may be impossible for a rural LEC. Rural LECs are limited in both their financial and human resources. Few companies can afford to hire a separate staff to run their advanced services affiliate. Those that do have the financial resources may, because of the small size of the communities, simply not have qualified people to hire. The realities of rural America often seem ignored by the FCC.

Rural LECs, while as a whole possess certain characteristics, as individuals are distinctive. The FCC should adopt rules and policies which provide the rural companies with the flexibility to serve their customers.⁹ The Commission in implementing the Telecommunications Act has adopted several rules which are very costly to the rural LECs.¹⁰ These incremental costs divert funds away

~~The majority of rural LECs are organized as cooperatives, and the subscribers are also the owners. The owner/subscribers need the flexibility to determine how best to serve their needs.~~

¹⁰ See, NTCA's Petition for Reconsideration of the Number Portability Cost Recovery Rules (CC Docket No. 95-116); NTCA's Petition for Reconsideration of the Customer

from service provision. Mandatory requirements are extremely expensive on a per line basis for small companies. For example, a \$10 million expenditure spread over 20 million customers is only 50 cents per line while a \$100 thousand expenditure spread over two thousand lines is the equivalent of \$50 per line.

~~The FCC's~~ continual insistence that small incumbent LECs are "dominant" is a further ~~regulatory obstacle~~ to rural carriers. The FCC consistently claims small LECS are not "small entities" because they are "dominant in their field of operation." This is despite the fact that the Small Business Administration (SBA) recognizes a telephone communications company with 15 hundred or fewer employees as a small business.¹¹

In 1986 the Commission apparently decided that all incumbent LECs were dominant in their local service area and thus dominant in their "field of operation."¹² However the SBA's

Proprietary Network Information Rules (CC Docket No. 96-115); NTCA's Petition for Reconsideration of Separate Subsidiary Requirement for Incumbent LECs Providing In-region, Interstate and International interexchange Services (CC Docket No. 96-149, 96-61); Comments of NTCA on Proposed OSS Performance Measurements and Reporting Requirements (CC Docket No. 98-56); Comments of NTCA on Proposed Quarterly Surveys, Data on Local Competition (CC Docket No. 91-141); Comments of NTCA on Interconnection Between LECs and Paging Carriers (CCB/CPD Docket No. 97-24); Comments of NTCA on Equal Access Requirements (CC Docket No. 92-237).

¹¹ SBA regulations state that the 1500 or fewer employee SBA standard identified by Standard Industrial Classification codes applies for purposes of the RFA. 13 C.F.R. § 121.902.

¹² In 1986, the Commission first concluded that the Regulatory Flexibility Act did not apply to incumbent LECs, no matter how small. At that time, it reasoned that every incumbent LEC, regardless of size, was not a "small entity" under Section 3 of the Small Business Act because that section excluded any business that is dominant in its field of operation. *Regulation of Small Telephone Companies, Notice of Proposed Rulemaking*, 51 Fed. Reg. 45912 (proposed December 23, 1986).

regulations clearly indicate that the "field of operation" is meant to be either the industry in which the company operates or a standard that examines the small business in a nationwide context.¹³ The Commission's 1986 determination never considered the SBA standard and was not initially intended to satisfy the Regulatory Flexibility Analysis. The FCC has only, after the fact, relied on the 1986 analysis in repeated instances where it has failed to weigh the consequences of its decisions on small incumbent LECs.

Every time the Commission declares a rural LEC dominant or excludes it from regulatory flexibility analysis in a proceeding, it is usurping the SBA's authority to determine what businesses are subject to protection and making a size determination. The Commission has been operating on a premise that automatically assumes the dominance of rural LECs and thus these companies have been disregarded in the regulatory flexibility analysis of past proceedings. As a result it has failed to make the necessary analysis which would cause it to consider adverse impacts on small incumbent LECs, including market entry barriers, each time it begins a proceeding to adopt regulations that affect these small entities. The Commission should adopt a new definition which classifies rural incumbent LECs as non-dominant and thus complete a regulatory flexibility check upon the initiation of every new proceeding. This approach may eliminate many regulations which are unnecessary, and sometimes nonsensical, for rural LECs and free up resources for deployment.

¹³ The SBA looks at factors such as "start up costs," "historical activity within an industry" and "unique factors occurring in the industry which may distinguish small firms from large firms." The SBA may also look at the characteristics "which may allow a concern to exercise a major controlling influence on a national basis in which a number of business concerns are engaged." 13 C.F.R. § 121.102. From either a nationwide or industry-wide perspective, rural local exchange carriers do not exercise major controlling influence and are not dominant.

V. CONCLUSION

Many small, rural LECs are preparing for and moving forward with deployment of advanced telecommunications services. Despite the forward-looking attitude of most telcos, high costs and regulatory hurdles are real obstacles to rural deployment. In order to keep rural areas on equal footing with urban areas the FCC must adopt rules and policies which recognize these realities of rural telecommunications service.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Rita H. Bolden, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in CC Docket No. 98-146, FCC 98-187 was served on this 14th day of September 1998, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:

Rita H. Bolden
Rita H. Bolden

Chairman William E. Kennard
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554

Commissioner Gloria Tristani
Federal Communications Commission
1919 M Street, N.W., Room 814-0101
Washington, D.C. 20554

Commissioner Michael Powell
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832-0104
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Federal Communications Commission
1919 M Street, N.W., Room 802
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International Transcription Service
1231 20th Street, N.W.
Washington D.C. 20036

ATTACHMENT B

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Inquiry Concerning the Deployment of)	CC Docket No. 98-146
Advanced Telecommunications Capability)	
To All Americans in a Reasonable and)	
Timely Fashion, and Possible Steps To)	
Accelerate Such Deployment Pursuant to)	
Section 706 of the Telecommunications Act)	
of 1996)	

COMMENTS OF GTE

GTE Service Corporation and its below-listed affiliates¹ (collectively, "GTE") respectfully submit their comments concerning the Notice of Inquiry ("NOI") in this docket.² The NOI was issued in response to Section 706(b) of the 1996 Act, which directs the Commission to "initiate a notice of inquiry concerning the availability of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms)"³ Based on this inquiry, the

¹ GTE Alaska, Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., GTE West Coast Incorporated, and Contel of the South, Inc., GTE Communications Corporation, GTE Wireless Incorporated, GTE Internetworking, and GTE Media Ventures Incorporated.

² FCC 98-187 (released August 7, 1998).

³ Public Law No. 104-104, § 706(b), 100 Stat. 153 (reproduced at 47 U.S.C. § 157 note).

Commission is to "determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion."⁴ If its determination is negative, the Commission "shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market."⁵ As discussed below, GTE urges the Commission to be guided by one fundamental principle in discharging its obligations under § 706: to promote the "reasonable and timely" deployment of advanced telecommunications capability, the Commission should engage in the least possible regulation and should treat all providers of advanced telecommunications capability symmetrically.

I. INTRODUCTION: THE FUTURE OF REGULATION IN A CONVERGING MARKETPLACE

GTE commends the Commission for recognizing at the very beginning of the NOI that it should "rely as much as possible on free markets and private enterprise to deploy advanced services."⁶ It is black-letter economics that, in the absence of market failure, the most efficient allocation of resources occurs through the operation of an unfettered interchange between buyers and sellers.⁷ The wisdom of this approach is

⁴ *Id.*

⁵ *Id.*

⁶ NOI, ¶ 5.

⁷ To the extent social policies favor the provision of services at rates or to areas where it is unprofitable to do so, universal service mechanisms can continue to assure that such policies are implemented. In a competitive marketplace, however, it is imperative that

(Continued...)